

<b>Report to:</b>	<b>Public Board of Directors</b>	<b>Agenda item:</b>	<b>14</b>
<b>Date of Meeting:</b>	<b>24 April 2019</b>		

<b>Title of Report:</b>	<b>Approval of Declarations of Interest and Fit &amp; Proper Persons Test Declaration</b>
<b>Status:</b>	<b>For Approval</b>
<b>Board Sponsor:</b>	<b>Alison Ryan, Chair</b>
<b>Author:</b>	<b>David Seabrooke, Interim Board of Directors' Secretary</b>
<b>Appendices</b>	<b>Appendix 1: Summary of CQC Guidance on Compliance Appendix 2: Annual Self Declaration Form</b>

<b>1. Executive Summary of the Report</b>
<p>This report presents the currently declared Board of Directors' interests for approval and reminds the Board of Directors of the need to adhere to the Seven Principles of Public Life (the "Nolan Principles").</p> <p>The Board of Directors undertakes an annual review and declaration that Board Members continue to meet the requirements of the CQC's Fit and Proper Persons Test as set out in appendix 1 and 2.</p>

<b>2. Recommendations</b>
<p>The Board of Directors is asked to:</p> <ol style="list-style-type: none"> <li>1. Approve the Register of Directors' Interests;</li> <li>2. Agree to continue to abide by the Seven Principles of Public Life; and</li> <li>3. Confirm that members of the Board of Directors continue to meet the requirements of the Fit and Proper Persons Test;</li> <li>4. Consider whether any ongoing checks (such as DBS checks) should be undertaken to provide evidence that Directors continue to meet these requirements.</li> </ol>

<b>3. Legal / Regulatory Implications</b>
<p>All members of staff are required to declare relevant interests and for members of the Board of Directors: these must be declared in the Trust's Annual Report.</p> <p>The requirements of the Fit and Proper Persons Test for executive and non-executive directors are set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.</p>

<b>4. Risk (Threats or opportunities, link to a risk on the Risk Register, Board Assurance Framework etc)</b>
none

<b>5. Resources Implications (Financial / staffing)</b>
N/A

<b>6.</b>	<b>Equality and Diversity</b>
N/A	

<b>7.</b>	<b>References to previous reports</b>
This is an annual report presented to the Board of Directors.	

<b>8.</b>	<b>Freedom of Information</b>
This is a public Board paper.	

# Review of the Board of Directors Declared Interests; the Nolan Principles of Public Life; and Fit and Proper Persons Test Declaration

## 1. DECLARATIONS OF INTEREST

### Background

The Trust's Declarations of Interest Policy requires all staff to declare relevant interests which are recorded on a central register of interest. Additionally, all "Decision Making" staff (which includes Directors, all staff at band 8D and above and those with substantial budgetary responsibility) are required to make an annual declaration of interests, which are published on the Trust website.

It is good practice for the Board of Directors to receive and review the interests declared by its members at least once a year for approval, and these are presented below.

### Board of Directors Declared Interests

The following interests have been declared by the members of the Board of Directors:

Surname	First Name	Role	Declared Interest
Boss	Jeremy	Non-Executive Director	<p>Non-Executive Director at the Drivers &amp; Vehicle Licensing Agency (DVLA)</p> <p>Chair of the Widcombe Association, the largest residents association in Bath</p> <p>Co-opted member of the Bath City Forum</p> <p>Chair of the IT Faculty of the Institute of Chartered Accountants in England &amp; Wales</p> <p>Member of the Governing Council of the Institute of Chartered Accountants in England &amp; Wales</p> <p>Director of Boss Cyber Limited, a sole employee advisory company</p>
Carlton	Rebecca	Chief Operating Officer	No interests currently declared
Cheek	Lisa	Director of Nursing & Midwifery	No interests currently declared
Foster	Jocelyn	Commercial Director (Non-	Complaints Panellist - Dental Complaints Service - Private Dentistry Complaints

<b>Surname</b>	<b>First Name</b>	<b>Role</b>	<b>Declared Interest</b>
		Voting)	Resolution Service  Investor in Veloscient Ltd (An organisation developing a platform to facilitate structured data capture for a range of markets including healthcare)
Hole	Joanna	Non-Executive Director	No interest currently declared
Johnson	Brian	Director of Facilities & Estates	No interest currently declared
Marden	Bernie	Medical Director	Paediatric adviser to Circle Reading (does not extend to Circle Bath)  Private practice (Paediatrics) carried out at the Royal United Hospitals Bath NHS Foundation Trust  Brother is a consultant in the RUH Gastroenterology department
Radley	Claire	Director of People (non-voting)	Member of The Honourable Company of Gloucestershire
Ryan	Alison	Chair	No interest currently declared
Scadding	Jane	Non-Executive Director	No interest currently declared
Scott	James	Chief Executive	Vice Chair and Company Director of the West of England Academic Health Science Network  Daughter employed by University Hospitals Bristol NHS Foundation Trust as a Deputy General Manager for Surgical Division
Stevens	Nigel	Non-Executive Director	School Governor, Beechen Cliff School, Bath
Sullivan	Nigel	Non-Executive Director	Director of West Four Apartments Company Ltd  Chief People Officer, BUPA
Walters	Libby	Director of	No interest currently declared

Surname	First Name	Role	Declared Interest
		Finance/Deputy Chief Executive	

## 2. THE NOLAN PRINCIPLES OF PUBLIC LIFE

The Committee on Standards in Public Life devised the Seven Principles, often referred to as the Nolan Principles, following its report into the standards of behaviour in public life in May 1995. The report identified that public life was more rigorously scrutinised than in the past, and that people in public life were not always as clear as they should have been about where the boundaries of acceptable conduct lay.

The 7 principles of public life apply to anyone who works as a public office-holder. This includes people who are elected or appointed to public office, nationally and locally, and includes all people appointed to work in health, education, social and care services.

All public bodies are required to have Codes of Conduct incorporating the Seven Principles and provide internal systems for maintaining standards which should be supported by independent scrutiny.

The Trust demonstrates this through:

- The Board of Directors' Code of Conduct;
- The Declarations of Interest Policy and Employee Code of Conduct;
- Completion of a register of interests as described above;
- An annual review of interests declared by the Board of Directors;
- Periodic reminding of the need to be open about relevant interests; and
- Conducting the majority of its business in the public domain to ensure transparency and openness.

The seven principles are:

### **Selflessness**

Holders of public office should act solely in terms of the public interest.

### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

### **Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

**Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

**Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

**Honesty**

Holders of public office should be truthful.

**Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

**3. FIT AND PROPER PERSON TEST**

The Health and Social Care Act (Regulated Activities) Regulations 2014 regulation 5 places a duty on NHS providers not to appoint a person or allow a person to continue to be a director under certain circumstances. Providers must not appoint an individual to an executive or non-executive director post unless the individual:

- 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, 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
- none of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual (see below).

The regulation state 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;

- 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.

Part 1 of Schedule 4 of the regulations lists categories of persons who are prevented from holding the office of Director, including:

- 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 is the responsibility of the Chairman 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.

All members of the Board of Directors have signed an annual self-declaration form in 2018/19 in the form set out in appendix 2 of this paper, confirming they continue to meet the requirements of the regulation as it relates to being a fit and proper person to hold the office of director.

The Board Secretary will prompt directors to update their declaration annually, and will raise any issues with the Chairman or Senior Independent Director as appropriate.

Checks are carried out on all new appointees to the Board (including DBS, bankruptcy and disqualified director checks, and confirmation of qualifications) and this evidence is held by the Board Secretary.

## **Recommendations**

The Board of Directors is asked to:

1. Approve the Register of Directors' Interests;
2. Agree to continue to abide by the Seven "Nolan" Principles of Public Life; and
3. Confirm that each member of the Board of Directors continues to meet the requirements of the Fit and Proper Persons Test;
4. Consider whether any ongoing checks (such as updated DBS checks) should be undertaken to provide evidence that Directors continue to meet these requirements.



## Appendix 1 – Summary of CQC Guidance on meeting the FPP Regulation

Component of the regulation:	Providers must have regard to the following guidance:
<b>5(1)</b> This regulation applies where a service provider is a body other than a partnership	This regulation applies to all providers that are not individuals or partnerships.
<p><b>5(2)</b> Unless the individual satisfies all the requirements set out in paragraph (3), a service provider must not appoint or have in place an individual—</p> <p>(a) as a director of the service provider, or</p> <p>(b) performing the functions of, or functions equivalent or similar to the functions of a director.</p>	<p>For NHS bodies it applies to executive and non-executive, permanent, interim and associate positions, irrespective of their voting rights. The requirement will also apply to equivalent director posts in other providers, including trustees of charitable bodies and members of the governing bodies of unincorporated associations.</p> <p>Where a local authority is a provider, the regulations will not apply to elected members as they are accountable through a different route.</p>
<b>5(3)(a)</b> the individual is of good character	<p>When assessing whether a person is of good character, providers must follow robust processes to make sure that they gather all available information to confirm that the person is of good character, and they must have regard to the matters outlined in Schedule 4, Part 2 of the regulations. It is not possible to outline every character trait that a person should have, but we would expect to see that the processes followed take account of a person's honesty, trustworthiness, reliability and respectfulness.</p> <p>If a provider discovers information that suggests a person is not of good character after they have been appointed to a role, the provider must take appropriate and timely action to investigate and rectify the matter.</p> <p>Where a provider considers the individual to be suitable, despite existence of information relevant to issues identified in Schedule 4, Part 2, the provider's reasons should be recorded for future reference and made available.</p>
<b>5(3)(b)</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,	<p>Where providers consider that a role requires specific qualifications, they must make this clear and should only appoint those candidates who meet the required specification, including any requirements to be registered with a professional regulator.</p> <p>Providers must have appropriate processes for assessing and checking that the candidate holds the required qualifications and has the competence, skills and experience required, (which may</p>

	<p>include appropriate communication and leadership skills and a caring and compassionate nature) to undertake the role. These must be followed in all cases and relevant records kept.</p> <p>We expect all providers to be aware of, and follow, the various guidelines that cover value-based recruitment, appraisal and development, and disciplinary action, including dismissal for chief executives, chairs and directors, and to have implemented procedures in line with the best practice. This includes the seven principles of public life (Nolan principles).</p>
<p><b>5(3)(c)</b> 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 employee</p>	<p>This aspect of the regulation relates to a person's ability to carry out their role. This does not mean that people who have a long-term condition, a disability or mental illness cannot be appointed. When appointing a person to a role, providers must have processes for considering their physical and mental health in line with the requirements of the role.</p> <p>All reasonable steps must be made to make adjustments for people to enable them to carry out their role. These must be in line with requirements to make reasonable adjustments for employees under the Equality Act 2010.</p>
<p><b>5(3)(d)</b> 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</p>	<p>Providers must have processes in place to assure themselves that a person has not been responsible for, privy to, contributed to, or facilitated any serious misconduct or mismanagement in the carrying on of a regulated activity. This includes investigating any allegation of such and making independent enquiries.</p> <p>Providers must not appoint any person who has been responsible for, privy to, contributed to, or facilitated any serious misconduct or mismanagement (whether lawful or not) in the carrying on of a regulated activity.</p> <p>A director may be implicated in a breach of a health and safety requirement or another statutory duty or contractual responsibility because of how the entire management team organised and managed its organisation's activities. In this case, providers must establish what role the director played in the breach so that they can judge whether it means they are unfit. If the evidence shows that the breach is attributable to the director's conduct, CQC would expect the provider to find that they are unfit.</p> <p>Although providers have information on when convictions, bankruptcies or similar matters are to be considered 'spent' there is no time limit for considering serious misconduct or responsibility for failure in a previous role.</p>
<p><b>5(3)(e)</b> none of the grounds of</p>	<p>A person who will be acting in a role that falls within the</p>

<p>unfitness specified in Part 1 of Schedule 4 apply to the individual.</p>	<p>definition of a "regulated activity" as defined by the Safeguarding Vulnerable Groups Act 2006 must be subject to a check by the Disclosure and Barring Service (DBS).</p> <p>Providers must seek all available information to assure themselves that directors do not meet any of the elements of the unfit person test set out in Schedule 4 Part 1. Robust systems should be in place to assess directors in relation to bankruptcy, sequestration, insolvency and arrangements with creditors. In addition, where a director meets the eligibility criteria, providers should establish whether the person is on the children's and/or adults safeguarding barred list and whether they are prohibited from holding the office in question under other laws such as the Companies Act or Charities Act.</p> <p>If a provider discovers information that suggests an individual is unfit after they have been appointed to a role, the provider must take appropriate and timely action to investigate and rectify the matter.</p>
<p><b>5(6)</b> 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—</p> <p><b>(a)</b> 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</p> <p><b>(b)</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</p>	<p>Providers must assess and regularly review the fitness of directors to ensure that they remain fit for the role they are in. Providers must determine how often to review fitness based on the assessed risk to business delivery and/or to the people using the service posed by the individual and/or role.</p> <p>Providers must have arrangements in place to respond to concerns about a person's fitness in relation to Regulation 5(3) and (4) after they have been appointed to a role, which either they or others have identified, and providers must adhere to these arrangements.</p> <p>Providers must investigate, in a timely manner, any concerns about a person's fitness or ability to carry out their duties, and where concerns are substantiated, they must take proportionate, timely action. Where a person's fitness to carry out their role is being investigated, appropriate interim measures may be required to minimise any risk to people who use the service.</p>

## Appendix 2

### Fit and Proper Person Requirements

#### Executive Directors and Non-Executive Directors – Self Declaration Form

On 20 November 2014 the Care Quality Commission (CQC) published guidance on the fit and proper person requirements which apply to all NHS providers. These regulations support ensuring the accountability of directors of NHS bodies and outline the requirements for robust recruitment and employment processes for board level appointments. As part of the assurance against the new Fit and Proper Person requirements for existing board members, you are required to complete the following self-declaration on an annual basis, sign, date and return.

Have you got the qualifications, competency, skills and experience which are necessary for the office or position or work for which you are employed / engaged?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Are you able by reason of health (after reasonable adjustments are made) of properly performing tasks which are intrinsic to the office or position or work for which you are employed / engaged?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Have you been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether lawful 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?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Have you been the subject of any of the following: <ul style="list-style-type: none"> <li>• Undischarged bankruptcy or a being a person whose estate has had sequestration awarded in respect of it and who has not been discharged. Subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order to like effect made in Scotland or Northern Ireland or elsewhere in the world.</li> <li>• A moratorium period under a debt relief order applied under Part VIIA (debt relief orders) of the Insolvency Act 1986.</li> <li>• A composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it.</li> <li>• 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 or</li> </ul>	<input type="checkbox"/> YES	<input type="checkbox"/> NO

<p>elsewhere in the world.</p> <ul style="list-style-type: none"> <li>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 (for example, under Companies or Charities legislation).</li> </ul>		
Have you 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?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Have you been erased, removed or struck-off a register of professionals maintained by a regulator of health care or social work professionals?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
<p>Have you ever been found not to be a fit and proper person for the purposes of Regulation 5, of the Health and Social Care Act 2008 (Regulated Activities) Regulations, namely the requirements to:</p> <ul style="list-style-type: none"> <li>Be of good character</li> <li>Have the qualifications, skills and experience necessary for the relevant position</li> <li>Be capable of undertaking the relevant position, after any reasonable adjustments under the Equality Act 2010</li> <li>Not have been responsible for any misconduct or mismanagement in the course of any employment with a CQC registered provider</li> <li>Not be prohibited from holding the relevant position under any other law e.g. Under the Companies Act or the Charities Act</li> </ul>	<input type="checkbox"/> YES	<input type="checkbox"/> NO

I hereby agree that the above is accurate.

Name:

Position:

Signed:

Date:

**Please return completed declaration forms to the Board of Directors' Secretary or the Director of People**