Fit and Proper Person Policy

Appendix 2 Summary Guidance

***Procedural Check 1: Good Character***

**Key Document References:**

NHS Employers 'Employment History and Reference Checks' dated July 2013.

NHS Employers 'Criminal Record and Barring Checks' dated July 2013.

NHS Employers 'Professional Registration and Qualification Checks' dated July 2013.

**Regulatory Requirement.**

Individuals are to be of good character (Regulation 5(3)(a)) with regard to (Schedule 4 Part 2):

* 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.

**Compliance with CQC Guidance: Policy**

Salisbury NHS Foundation Trust (SFT) policy is that it will maintain robust processes and continuous assessment to:

* Make sure that all available information is gathered to confirm the directors' good character*,* on appointment and thereafter annually through declarations.
* Take account of the individuals' honesty, trustworthiness, reliability and respectfulness as part of their temperament, character and empathies.
* Confirm that individuals have not been complicit with significant care failures and none of the definitions of unfitness should apply.
* Take appropriate and timely action to investigate and rectify instances where information is discovered that an individual is not of good character after a person has taken up their role. This will include:
* Taking action as soon as possible to minimise harm or potential harm to people receiving services.
* Evidencing any reasons for any delays that any reasonable trust would avoid.

Regard may be had to when convictions and bankruptcies are considered 'spent'

**Employment of Individuals with Previous Character Issues.**

Where SFT deems an individual to be suitable for employment, after checks have identified that individual as being convicted of an offence, and/or removed from the register of professional health or social care regulators, the following action will be taken:

* The reasons are to be recorded.

The information regarding the decisions is to be made available to those that are required to know.

**Responsibilities**

The Head of Resourcing and Director of Corporate Governance will jointly ensure that the data sources, to comply with the regulatory requirement as listed in section 13 are collected as part of the recruitment process.

**Procedure for Conducting the Checks**

* All applicants will be required to provide a self-disclosure on their criminal history.
* Once the individual has been offered the role, a DBS check will be undertaken. If the individual has indicated on their application that they have worked outside of England, one of the region specific service checks will be completed.
* A check of the registers of relevant professional bodies will be completed to confirm registration and any conditions/restrictions which may have been applied. Where this is not publicly accessible, the individual will be asked to provide proof of registration.
* A review will be undertaken of publicly available information on the other listed organisation’s websites, which will include searching for the individual’s name within the websites.

**Procedure for Recording and Retaining the Check Information**

* Copies of all documents and, where possible, searches made, will be included in the individual’s recruitment and, if successful, their employment file. Where a search returns a nil value, then a copy of the search and result will be included within the file.

***Procedural Check 2: Qualifications, Competence, Skills & Experience***

**Key Document References**

NHS Employers 'Employment History and Reference Checks' dated July 2013.

NHS Employers 'Professional Registration and Qualification Checks' dated July 2013.

**Regulatory Requirement**

Individuals are to have the necessary qualifications, competence, skills and experience required for their office or position (Regulation 5(3)(b)).

**Compliance with CQC Guidance: Policy**

SFT policy is that:

* All specific qualifications deemed necessary for a role will be made clear as part of job specifications and contracts. Only individuals who meet the requirements will be employed.
* SFT will assess and check all individuals hold the required qualifications competence, skills and experience, including the requirement to be registered with a professional regulator, the appropriate communication and leadership skills, and evidence of a caring and compassionate nature as required.
* SFT will apply best practice guidelines addressing value-based recruitment, and in conducting regular appraisal and development of individuals.
* SFT will take the appropriate disciplinary action including dismissal of directors if required.

**Developing Competence**

Where SFT consider that an individual can be appointed to a role based on their qualifications, skill and experience, with the expectation that they will develop specific competence to undertake the role within a specified timeframe, the Trust will record that fact and monitor the progress and development of the individual.

**Best Practice**

SFT will ensure that it applies best practice in accordance with the CQC expectation that providers be aware of the various guidelines, and to have implemented procedures in line with best practice, and the seven principles of public life (the Nolan Principles).

**Responsibilities**

* The Head of Resourcing will ensure that the data sources, to comply with the regulatory requirement, are collected as part of the recruitment process.

**Procedure for conducting checks**

* All applicants will be required to submit an application form which includes details of the applicants work and training history, details of at least two referees, one of whom should be the individual’s current or last line manager.
* Where gaps are listed in the individual’s employment history these should be challenged by the appointing manager and an explanation sought.
* Copies of any academic and/or professional qualifications, which are used as the basis for selecting the candidate, should be requested. Only originals should be accepted as evidence of award.
* The Trust will also undertake a check through a third party background checking service to ensure that the academic and/or professional qualifications presented are genuine.

**Procedure for Recording and Retaining the Check Information**

* Copies of all documents and, where possible, searches will be included in the individual’s recruitment and, if successful, their employment file. Where a search returns a nil value, then a copy of the search and result will be included within the file.

***Procedural Check 3: Health***

**Key Document References:**

NHS Employers 'Work Health Assessments' dated July 2013.

**Regulatory Requirement.**

Individuals are to be able by reason of their health, after reasonable adjustments have been made, of properly performing those tasks which are intrinsic to the office or position for which they are appointed, or to the work for which they are employed (Regulation 5(3)(c)).

**Compliance with CQC Guidance: Policy**

SFT policy is that those people in positions of control must be appropriately physically and mentally fit in accordance with their role, and after making reasonable adjustments, to enable individuals to carry out their responsibilities with regard to sustaining the management function. This must be in line with the provisions of the Equality Act 2010.

**Responsibilities**

* The Head of Resourcing will ensure that the data sources, to comply with the regulatory requirement, are collected as part of the recruitment process.

**Procedure for Conducting the Checks**

* Once the individual has been offered the role, they will be asked to submit an occupational health assessment to identify whether they have a health condition or disability which may require an adjustment to the workplace.
* If the occupational health assessment indicates that further assessment is required, then this will be commissioned by the Head of Resourcing.

***Procedural Check 4: Misconduct or Mismanagement***

**Key Document References**

National Clinical Assessment Service 'Protocol for Reviewing Health Professional Alert Notices' dated April 2013.

National Clinical Assessment Service 'NCAS Operational Protocol: Issue of Health Professional Alert Notices' dated April 2013.

**Regulatory Requirement**

Individuals must not at any time in their career have 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 aregulated activity orproviding a service elsewhere which, if provided in England, would be a regulated activity. Individuals should not have been complicit with significant care failures.

**Serious Misconduct or Mismanagement**

* Misconduct or mismanagement means behaviour that would constitute a breach of any legislation or enactment that the CQC deems relevant to meeting these regulations or their component parts.
* 'Serious misconduct' might be expected to include assault, fraud and theft, breaches of health and safety regulations, intoxication while on duty, any breach of confidentiality, disobedience of lawful and reasonable instruction, and disrespect in the workplace.
* Where these actions take place, the individual concerned is to be subject to SFT disciplinary procedure under the Disciplinary Policy and the details retained on the personnel files.
* Mismanagement might be expected to indicate that a director has dealt with responsibilities badly or carelessly, by mismanaging funds and / or not adhering to recognised practice, of following guidance, or processes within which an individual is meant to work.
* Where these actions take place, the individual concerned is to be subject to SFT disciplinary procedure under the Disciplinary Policy and the details retained on the personnel files.
* 'Responsible for, contributed to, or facilitated' means there is evidence that a person has intentionally, or through neglect, behaved in a manner that would be considered to be, or would have led to serious misconduct or mismanagement.
* 'Privy to' means that there is evidence that could lead the provider to reasonably conclude that a person was aware of serious misconduct or mismanagement but did not take the appropriate action to ensure it was addressed.

Collective Responsibility:

* Where individuals are implicated in a breach of health and safety requirements, or other statutory duty or contractual responsibility due to how the management team organised and managed activities, SFT will seek to establish what role the individual played in the breach. If the breach is attributable to the individuals conduct, CQC will expect that SFT will find them unfit.

**Policy**

SFT policy is to investigate any allegations that individuals may have been party to misconduct or mismanagement as defined within Regulation 5. The appropriate action will be taken to ensure that no harm comes to staff or patients, and where appropriate the individual concerned, if in post, will be suspended in accordance with the Trust's disciplinary policy whilst the investigation takes place.

**Responsibilities**

* The Head of Recruitment and Director of Corporate Governance will jointly ensure that the data sources, to comply with the regulatory requirement as listed in section 16.5, are collected as part of the recruitment process.

**Procedure for Conducting the Checks**

* All applicants will be required to submit an application form which includes details of the applicants work and training history, details of at least two referees, one of whom should be the individual’s current or last line manager.
* The references will be requested and considered by the recruiting manager to consider if there are any issues which may require any further investigation.

**Procedure for Recording and Retaining the Check Information**

* Copies of all documents and, where possible, searches will be included in the individual’s recruitment and, if successful, their employment file. Where a search returns a nil value, then a copy of the search and result will be included within the file.

***Procedural Check 5: Grounds of Unfitness***

**Regulatory Requirement:**

* SFT must seek all available information to assure itself that directors do not meet any elements of the unfit person test (Schedule 4 Part 1). This includes whether the person is:
* An undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged.
* 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 who 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.
* 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 such as the Companies Act 2006 and the Charities (Protection and Social Investment) Act 2016.

**CQC Guidance**

* Only individuals 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 DBS. Where providers deem the individual is suitable despite not meeting the characteristics required, the reasons must be recorded and information about the decision made available to those that need to be aware. It is for the provider to regularly review the fitness of directors to ensure they remain fit for their role and to investigate concerns in a timely manner.

**Responsibilities**

* The Director of Corporate Governance will ensure that the data sources, to comply with the regulatory requirements are collected as part of the recruitment process.

**Procedure for Conducting Checks**

* The various registers and sources of information will be reviewed for the details of the individuals.

**Procedure for Recording and Retaining the Check Information**

* Copies of all documents and, where possible, searches will be included in the individual’s recruitment and, if successful, their employment file. Where a search returns a nil value, then a copy of the search and result will be included within the file.