

## **TOWER HAMLETS GP CARE GROUP (THGPCG)**

### **On-going monitoring of fitness and suitability of directors**

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| Date Issued                | 01/04/2015   |
| Title                      | On-going monitoring of fitness and suitability of directors                |
| Supersedes                 | All previous Policies  |
| This policy will impact on | THGPCG Board   |
| Related Policies           | Safeguarding Policy, Whistleblowing Policy, DBS Policy, Recruitment Policy |
| Policy Area                | Governance   |
| Version No                 | 1  |
| Issued By                  | Governance Team  |
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|             | <b>Committees / Groups / Individual</b> | <b>Date</b> |
|-------------|---|-------------|
| Approved by | Governance Group                        |             |
| Approved by | THGPCG Board                            |             |

## Introduction

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.

All registered providers must demonstrate that they are meeting regulatory requirements in order to register with CQC and then continue to deliver regulated services. From 1 April 2015, all providers carrying on a regulated activity must meet the new Regulation 5: Fit and proper persons: directors.

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.

### The requirement for fit and proper persons

Providers 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, competence, skills and experience; which are necessary for the relevant office or position or the work for which they are employed,
- Are able to perform the work that they are employed for 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

- Have 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 apply to the individual.

The regulations 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.

## **1. At Appointment**

In order to ensure that the Directors are fit and proper for their roles, on appointment of a new director the THGPGC Board will undertake Employment Checks in accordance with NHS Employment Check Standards. This will be signed off by the Clinical Director/Chair

The following checks will be undertaken:-

- An up to date CV
- Two references, one of which must be most recent employer
- Qualification and Professional Registration Checks
- Right to Work Checks
- Proof of Identity Checks including recent photograph
- Occupational Health Clearance
- DBS Checks
- Search of insolvency and bankruptcy register
- Search of disqualified directors register

1.1 Where an individual is suitable despite not meeting the characteristics outlined above the reasons should be recorded and information about the decision should be made available to those that need to be aware. Decisions and reasons for decisions recorded in minutes. Record that due process was followed for FOIA purposes.

- 1.2 Where specific qualifications are deemed as necessary for a role, this must be made very clear. THGPGC will only employ those individuals that meet the required specification. The requirements must be included within the job description (person specification) for all relevant posts and checked as part of the pre-employment checks and references on qualifications (recruitment policy and procedure).
- 1.3 Employment checks must be carried out including candidate's qualifications and employment references. The Recruitment Process should include qualitative assessment and values-based questions. All decisions must be recorded in minutes.
- 1.4 It may be that an individual can be appointed to a role based on their qualification, skills and experience with the expectation that they will develop specific competence to undertake the role within a specified timeframe. In this case, recommendations must be given to the THGPGC Shareholders. The reports discussion and recommendations must be recorded in minutes of meetings. This must be followed up as part of continuing review and appraisal.
- 1.5 Occupational Health Clearance must be undertaken as part of the pre-employment process to ensure the person's physical and mental health in line with requirements of the role, all subject to equalities and employment legislation and due process.
- 1.6 Wherever possible, reasonable adjustments are made in order that an individual can carry out the role. Refer to NHS Employment Check Standards. Report must be given to the Board.
- 1.7 THGPGC will not employ any individual 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; this includes investigating any allegation of such potential behavior. Where the individual is professionally qualified, it may include fitness to practice proceedings and professional disciplinary cases.
- 1.8 Only individuals who will be acting in a role that falls within the definition of a 'regulated activity' as defined by the Safeguarding Vulnerable Groups Act 2006 will be eligible for a check by the Disclosure and Barring Service (DBS). DBS checks must be undertaken only for those posts which fall within the definition of a "regulated activity" or which are otherwise eligible for such a check to be undertaken.
- 1.9 Ascertain whether the individual is on a relevant DBS List as part of the recruitment/appointment process. Eligibility for DBS checks must be assessed for each vacancy arising.

## 2. Continuous Monitoring

- 2.1 The fitness of directors will be monitored regularly and will be reviewed by the Clinical Director to ensure that they remain fit for the role they are in; Assessment of continued fitness will be undertaken each year as part of the appraisal process. Checks of insolvency and bankruptcy register and register of disqualified directors will be undertaken each year as part of the appraisal process. The Board will review checks and agree the outcomes. Board minutes must be recorded that process has been followed.
- 2.2 If after appointment to a role, it appears that an individual is not of good character, timely and appropriate action must be taken to investigate and rectify the matter. Our HR Policies will provide for these investigations i.e. relevant contractual agreements incorporating maintenance of fitness as a contractual requirement.
- 2.3 Any investigations must be done in a timely manner and where concerns are substantiated, proportionate and timely action must be taken. Due diligence must be demonstrated in all actions. HR policies will include the necessary provisions. All action taken must be recorded.
- 2.4 Where a person's fitness to carry out their role is being investigated, appropriate interim measures will be required to minimise any risk to service users. HR Policies will include necessary provision – Managerial action must be taken to backfill posts.
- 2.5 Concerns/findings relating to a person's fitness must be reported to appropriate bodies i.e. Professional regulators, CQC and other relevant Bodies.