

## Board of Directors

<b>Date:</b>	26 September 2018	<b>Attachment Number:</b>	L																
<b>Title of Report:</b>	<b>Company Secretary's Report</b>																		
<b>Purpose of the report and the key issues for consideration/decision:</b>	<p>The report presents a number of governance related matters for Board assurance and information.</p> <ol style="list-style-type: none"> <li>1. Fit and Proper Person Test – assurance against new guidance (See following report and appendices 1 to 3.)</li> <li>2. UK Corporate Governance Code (appendix 4). A review against the new Code will be undertaken and presented to the October Board meeting.</li> <li>3. Airedale NHSFT Charitable Funds – monthly report During July and August 2018, the Airedale NHSFT Charitable Funds spent over £13k and received donations of over £168k, including £125k legacy, split between the Haematology Unit and HODU; £25k legacy, for the benefit of a Cancer Research Project; and £5k donation to the Palliative Care Fund for MND Service.</li> <li>4. Board Action Log The Board action log is attached for review (appendix 5).</li> </ol>																		
<b>Prepared by:</b>	Jane Downes, Group Company Secretary																		
<b>Presented by:</b>	Jane Downes, Group Company Secretary																		
<b>Strategic Objective(s) supported by this paper:</b>	<table border="1"> <tr> <td><b>Financial Sustainability</b></td> <td>X</td> <td><b>Empower &amp; Engage Staff</b></td> <td>X</td> </tr> <tr> <td><b>Quality of Care</b></td> <td>X</td> <td></td> <td></td> </tr> </table>			<b>Financial Sustainability</b>	X	<b>Empower &amp; Engage Staff</b>	X	<b>Quality of Care</b>	X										
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<b>Quality of Care</b>	X																		
<b>Is this on the Trust's risk register:</b>	<table border="1"> <tr> <td><b>No</b></td> <td>X</td> <td><b>Yes</b></td> <td></td> <td><b>If Yes, Score</b></td> <td></td> </tr> </table>			<b>No</b>	X	<b>Yes</b>		<b>If Yes, Score</b>											
<b>No</b>	X	<b>Yes</b>		<b>If Yes, Score</b>															
<b>Which CQC Standards apply to this report:</b>	Well-led Regulation 5: Fit and Proper Persons: Directors																		
<b>Have all implications related to this report been considered: (please X)</b>	<table border="1"> <tr> <td><b>Finance Revenue &amp; Capital</b></td> <td></td> <td><b>Equality &amp; Diversity</b></td> <td>X</td> </tr> <tr> <td><b>National Policy/Legislation</b></td> <td>X</td> <td><b>Patient Experience</b></td> <td></td> </tr> <tr> <td><b>Human Resources</b></td> <td>X</td> <td><b>Terms of Authorisation</b></td> <td></td> </tr> <tr> <td><b>Governance &amp; Risk Management (BAF)</b></td> <td>X</td> <td><b>Other:</b></td> <td></td> </tr> </table>			<b>Finance Revenue &amp; Capital</b>		<b>Equality &amp; Diversity</b>	X	<b>National Policy/Legislation</b>	X	<b>Patient Experience</b>		<b>Human Resources</b>	X	<b>Terms of Authorisation</b>		<b>Governance &amp; Risk Management (BAF)</b>	X	<b>Other:</b>	
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<b>Previously Considered By:</b>	<table border="1"> <tr> <td><b>Item 3. Airedale NHS Charitable Funds Sub-Committee</b></td> <td><b>Date:</b></td> <td><b>17 September 2018</b></td> </tr> </table>			<b>Item 3. Airedale NHS Charitable Funds Sub-Committee</b>	<b>Date:</b>	<b>17 September 2018</b>													
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**Recommendations:**

1. Approve the actions required for FPPR compliance;
2. Note that a review against the new UK Code of Governance will be presented at the October Board of Directors meeting;
3. Note the Airedale NHS Charitable Funds income and expenditure report for July and August 2018 and record thanks for donations on behalf of the Corporate Trustee; and
4. Review the Board action log.

# Board of Directors

## 26 September 2018

### 1. Context / Background

#### Fit and Proper Person Test – Assurance CQC Regulation 5: Fit and Proper Persons: Directors

The intention of this regulation is to ensure that people who have director level responsibility for the quality and safety of care, and for meeting the fundamental standards, are fit and proper to carry out this important role.

CQC cannot prosecute for a breach of this regulation or any of its parts, but can take regulatory action.

### 2. Executive Summary

A minor update has been issued to the guidance that sits underneath regulation 5 Fit and proper person 5(3)(e) in the guidance for providers on meeting the regulations. This is to make explicit that the CQC expect providers to undertake an enhanced DBS check for directors to check that they are on the children's and / or safeguarding barred list where they meet the eligibility criteria.

The update is shown below in bold:

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.

We have therefore taken the opportunity to undertake a general review of the Trust's assurance processes in place and present a number of recommendations for Board discussion and agreement.

### 3. Report Headings

#### Assurance Checklist (appendix 1)

The Trust assesses each Board director against the Fit and Proper Persons Requirements (FPPR) prior to appointment. For all new appointments, the requirement to undertake checks relating to FPPR are built in to the arrangements with the Trust's external search consultant (if used) or by the Trust's HR recruitment process. This includes a requirement of the contract that any new appointee has to sign.

The assurance checklist is completed by the Company Secretary for ED and NED appointments. It has been revised to cross reference the evidence required to the CQC standard being assessed.

#### Compliance with the CQC Regulations (appendix 2)

A compliance review against the FPPR has indicated actions the Trust 'must do', 'should do' or would be deemed 'good practice'. The actions are listed below:

- a. Where a director meets the eligibility test, an enhanced DBS check should be undertaken. ('must do').
- b. Annual assessment against the assurance checklist, including annual DBS checks (which could be achieved by subscribing to an updating service. ('should do').
- c. Enhance the current wording in Director contracts in relation to FPPR requirements, Appendix 3. ('good practice').

- d. Publish the annual assurance checklist on the Trust website. This would be in addition to the current practice of publishing the Register of Interests/Declarations. ('good practice').
- e. Extend compliance with the FPPR to Deputy Board Director posts. NB: the Deputy Director of Nursing has been appointed in accordance with CQC FPPR. Agreement has been reached with the Deputy Medical Director posts to undertake a retrospective FPPR Test. ('good practice').

#### **4. Conclusions**

The Group Company Secretary and Associate Director of HR and Workforce will ensure the actions indicated in section 3 are completed.

The Board should consider whether any further actions are required in order to meet the requirements of the CQC FPPR.

#### **5. Recommendations**

The Board are invited to consider and approve the following recommendations:

- (i) The Trust will undertake enhanced DBS checks where a Director meets the eligibility test;
- (ii) Annual compliance assessment will be undertaken, including annual DBS checks;
- (iii) Director contracts will be updated to include the wording shown in appendix 3;
- (iv) The annual assurance checklist will be published on the Trust website; and
- (v) Compliance with FPPR will be extend to Deputy Board Director posts.

## FIT AND PROPER PERSON – ASSURANCE CHECKLIST

(appendix 1)

**NAME:**

**TITLE:**

Evidence required	Standard assessed (see table overleaf)	Complete Y/N	Rationale if no or any issues identified	Date
Two references, one of which must be most recent employer	1,9,10	Y		
Qualification and professional registration check	1	Y		
Right to work check	1	Y		
Review of identification documents	1	Y		
Occupational health clearance	1,7	Y		
DBS checks	1,11,12	Y		
Signed declaration form (part of application)	1,9	Y		
Signed contract (Executive Directors) / Signed terms and conditions of service (Non-Executive Directors)	2,14,15	Y		
Search of insolvency & bankruptcy register	1	Y		
Search of disqualified directors register	1	Y		
Annual fit and proper person declaration / Declaration of interests	ALL	-		
Completed and signed annual appraisal	6,13	Y		

Standard reference	Standard	Assurance	(appendix 2) Evidence
1	<p>Providers should make every effort to ensure that all available information is sought to confirm that the individual is of good character as defined in Schedule 4, Part 2 of the regulations.</p> <p><i>(Sch.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.)</i></p>	<p>Employment checks are undertaken in accordance with NHS Employers pre-employment check standards and include:</p> <ul style="list-style-type: none"> <li>▪ Two references, one of which must be most recent employer</li> <li>▪ qualification and professional registration checks</li> <li>▪ right to work checks</li> <li>▪ identity checks</li> <li>▪ occupational health clearance</li> <li>▪ DBS checks (where appropriate)</li> </ul> <p>In addition, we will also carry out:</p> <ul style="list-style-type: none"> <li>▪ Declarations of fitness by candidates</li> <li>▪ Search of insolvency and bankruptcy register (*)</li> <li>▪ Search of disqualified directors register (*)</li> </ul>	<p>References</p> <p>Other pre-employment checks.</p> <p>DBS checks (where appropriate).</p> <p>Signed declarations from applicants.</p> <p>Register search results.</p> <p>List of referees and sources of assurance for FOIA purposes.</p>
2	<p>If a provider discovers information that suggests an individual 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>Disciplinary policy and procedure provides for such investigations.</p> <p>Revised contracts allow for termination in the event of non-compliance with regulations and other requirements.</p>	<p>Contracts of employment (for EDs and director-equivalents).</p> <p>Terms and conditions of service agreements (for NEDs).</p> <p>Disciplinary policy and procedure.</p>
3	<p>Where a provider deems the individual suitable despite not meeting the characteristics outlined in Schedule 4, Part 2 of these regulations, the reasons should be recorded and information about the decision should be made available to those that need to be aware.</p>	<p>This would be the subject of debate at the Board Appointments, Remuneration and Terms of Service Committee ('BART') (for EDs and director-equivalents) and at the Council of Governors (for NEDs). The minutes would record such decisions.</p> <p>The Chair would take advice from internal and external advisers as appropriate.</p>	<p>Minutes of meetings.</p>

<b>4</b>	Where specific qualifications are deemed by the provider as necessary for a role, the provider must make this clear and should only employ those individuals that meet the required specification, including any requirements to be registered with a professional regulator.	This requirement is included within the job description for relevant posts and is checked as part of the pre-employment checks.	Person specification. Recruitment policy and procedure.
<b>5</b>	The provider should have appropriate processes for assessing and checking that the individual holds the required qualifications and has the competence, skills and experience required, (which may include appropriate communication and leaderships skills and a caring and compassionate nature), to undertake the role; these should be followed in all cases and relevant records kept.  <i>NB: While this provision most obviously applies to executive director appointments in terms of qualifications - skills and experience will be relevant to NED appointments.</i>	Employment checks include a candidate's qualifications and employment references.  The recruitment process also includes qualitative assessment and values-based questions.	Recruitment policy and procedure. Values-based questions. Person specification.
<b>6</b>	The provider may consider that an individual can be appointed to a role based on their qualifications, skills and experience with the expectation that they will develop specific competence to undertake the role within a specified timeframe.	Any such decision would be discussed by the BART or Council of Governors and would be minuted.  Actions would be subject to follow-up as part of ongoing review and appraisal.	Minutes of BART and/or COG. NED appraisal framework. NED competence framework. Notes of ED appraisals.
<b>7</b>	When appointing relevant individuals the provider has processes for considering a person's physical and mental health in line with the requirements of the role.	All post-holders are subject to clearance by occupational health as part of the pre-employment process.	Occupational health clearance.
<b>8</b>	Wherever possible, reasonable adjustments are made in order that an individual can carry out the role.	Self-declaration of adjustments required.  NHS Employment Check Standards.  Board/Council of Governor's decision	Disability policy.  Minutes of Board meeting/Council of Governors meeting.

<p><b>9</b></p>	<p>The provider has processes in place to assure itself that the individual has not been at any time 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 potential behaviour. Where the individual is professionally qualified, it may include fitness to practise proceedings and professional disciplinary cases.</p> <p><i>('Regulated activity' means activities set out in Schedule 1, Regulated Activities, of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. Schedule 1 covers the provision of:</i></p> <ul style="list-style-type: none"> <li><i>Personal care; accommodation for persons who require nursing or personal care; accommodation for persons who require treatment for substance misuse; treatment of disease, disorder or injury; assessment or medical treatment for persons detained under the 1983 Act; surgical procedures; diagnostic and screening procedures; management of supply of blood and blood derived products etc; transport services; triage and medical device provided remotely; maternity and midwifery services; termination of pregnancies; services in slimming clinics; nursing care; family planning services.</i></li> </ul> <p><i>'Responsible for, contributed to or facilitated' means that there is evidence that a person has intentionally or through neglect behaved in a manner which would be considered to be or would have led to serious misconduct or mismanagement.</i></p> <p><i>'Privy to' means that there is evidence that a person was aware of serious misconduct or mismanagement but did not take the appropriate action to ensure it was addressed.</i></p>	<p>This has been incorporated as a specific declaration as part of the pre-employment process.</p> <p>Checks set out in 1.          Reference request template in place for all director and director-equivalent posts.</p>	<p>NED Recruitment Information pack.          Pre-employment declaration.          Reference Request for ED/NED.</p>
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*‘Serious misconduct or mismanagement’ means behaviour that would constitute a breach of any legislation/enactment CQC deems relevant to meeting these regulations or their component parts.’).*

NB: This provision applies equally to Executive and Non-Executive Directors.

<p><b>10</b></p>	<p>The provider must not appoint 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 behaviour. Where the individual is professionally qualified, it may include fitness to practise proceedings and professional disciplinary cases.</p> <p><i>NB: The CQC accepts that providers will use reasonable endeavours in this instance. The existence of a compromise agreement does not indemnify the new employer and providers need to ensure that core HR policies address the approach to compromise agreements.</i></p>	<p>This has been incorporated as a specific declaration as part of the pre-employment process.</p> <p>It will be incorporated into a revised reference request template for all director and director-equivalent posts.</p> <p>Checks set out in section 1 above.</p>	<p>NED Recruitment Information pack.</p> <p>Reference Request for ED/NED.</p>
<p><b>11</b></p>	<p>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).</p> <p><i>NB: The CQC recognises that it may not always be possible for providers to access a DBS check as an individual may not be eligible.)</i></p>	<p>DBS checks are 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.</p>	<p>DBS policy.</p> <p>DBS checks for eligible post-holders.</p>
<p><b>12</b></p>	<p>As part of the recruitment/appointment process, providers should establish whether the individual is on a relevant DBS list.</p>	<p>Eligibility for DBS checks will be assessed for each vacancy arising.</p>	<p>DBS policy.</p>

<p><b>13</b></p>	<p>The fitness of directors is regularly reviewed by the provider to ensure that they remain fit for the role they are in; the provider should determine how often fitness must be reviewed based on the assessed risk to business delivery and/or the service users posed by the individual and/or role.</p>	<p>Post-holders undertake <b>annual declarations</b> of fitness to continue in post as part of the appraisal process.</p> <p>Checks of insolvency and bankruptcy register and register of disqualified directors <b>to be undertaken each year</b> as part of the appraisal process. (*)</p> <p>Board/Council of Governors reviews checks and agrees the outcome.</p>	<p>Annual declaration.</p> <p>NED appraisal process.</p> <p>ED appraisal process.</p> <p>BART/ARC to receive confirmation of outcome.</p>
<p><b>14</b></p>	<p>The provider has arrangements in place to respond to concerns about a person's fitness after they are appointed to a role, identified by itself or others, and these are adhered to.</p>	<p>The disciplinary policy provides these arrangements, and <b>revised contracts</b> (for EDs and director-equivalents) and agreements (for NEDs) incorporate maintenance of fitness as a contractual requirement.</p>	<p>Disciplinary policies.</p> <p>ED contracts of employment.</p> <p>NED agreements.</p>
<p><b>15</b></p>	<p>The provider investigates, in a timely manner, any concerns about a person's fitness or ability to carry out their duties, and where concerns are substantiated, proportionate, timely action is taken; the provider must demonstrate due diligence in all actions.</p>	<p>This will be undertaken if concerns are identified and revised contracts provide for termination if individuals fail to meet necessary standards.</p>	<p>Revised employment contracts for ED and NEDs.</p>
<p><b>16</b></p>	<p>Where a person's fitness to carry out their role is being investigated, appropriate interim measures may be required to minimise any risk to service users.</p>	<p>This would be reviewed when concerns are identified.</p> <p><i>NB: Whilst it is the ultimate responsibility of the Chair to discharge the requirement placed on the Trust to ensure that all Directors meet the fitness test and do not meet any of the unfit criteria, only the Board of Directors, with delegated authority given to BART (in the case of Execs) and Council of Governors (in the case of NEDs) have the power to dismiss or remove.</i></p>	<p>Disciplinary policy.</p> <p>See Trust SOP for handling 'information of concern' and CQC process 'handling information of concern' relating to EDs and NEDs.</p>
<p><b>17</b></p>	<p>The provider informs others as appropriate about concerns/findings relating to a person's fitness; for example, professional regulators, CQC and other relevant bodies, and supports any related enquiries/investigations carried out by others.</p>	<p>This would be completed if any concerns were identified.</p>	<p>Referrals made to other agencies.</p>

## **Contract Wording for Executive Directors and Non-Executive Directors**

### NHS Fit and Proper Persons Requirement

By entering into an employment contract with the Trust you are declaring that you are aware of and meet the requirements of the NHS Fit and Proper Persons Requirements test and that you have not been responsible for, privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying out a regulated activity or discharging any functions whether or not in a junior capacity to that which you now hold or when working outside England. You accept the continuing obligations to declare to the Chair, Chief Executive or Company Secretary of the Trust any material fact which may indicate that you may not meet the test including any allegations of the kind listed in this clause and if you are professionally qualified it may include fitness to practice proceedings and professional disciplinary cases. The Trust reserves the right to carry out checks against the Fit and Proper Persons Requirements test from time to time. If there is evidence of non-compliance the Trust reserves the right to terminate your contract.

# Briefing: the new UK Code of Governance

## Summary

The Financial Reporting Council (FRC) has published the new UK Corporate Governance Code (the code) which comes into force from 1 January 2019. Annual reporting compliance with the code is a listing requirement for companies with a premium listing in equity shares. The code will be of interest to all trust board members as a benchmark of good corporate governance which is tried and tested not least as the *Code of Governance for NHS Foundation Trusts* has historically been updated in line with the Code. This briefing summarises key changes set out in the code.

## Key points

The new UK code stresses the need for organisations to build trust by fostering strong relationships with their key stakeholders. It requires organisations to set and develop a corporate culture that is aligned with the organisation's purpose and its strategy, which promotes integrity and values diversity.

The new code is based on key general principles and on more specific provisions in common with previous iterations of the code. However in the new code there is greater emphasis on the application of the principles with clear, meaningful reporting to stakeholders. The code also places an onus on stakeholders to assess explanations of non compliance carefully, not adopt a tick-box approach. It is also more concise and should prove to be easier to apply and report on.

The relevance of the new code to the NHS is twofold:

- First it represents the latest thinking on the application of good corporate governance which is a tried, tested and trusted framework for the leadership and direction of organisations in the UK, so it should be of interest to all board led organisations
- Secondly the *Code of Governance for NHS Foundation Trusts*, last revised in 2014, has been based on the UK Code and traditionally has been revised with each new iteration of the UK Code.

## Key changes

The main changes in the updated code include:

**Workforce and stakeholders:** There is a new provision to promote greater board engagement with the workforce to understand their views. The code asks boards to describe how they have considered the interests of stakeholders when performing their duty to promote the success of the organisation.

**Culture:** The new code places far greater emphasis than ever on the need for boards to create a culture which aligns the organisation's values with strategy. Importantly the code asks boards to assess how the

board leads in generating and preserving value over the long-term, a significant move from achieving short term gain.

**Succession and diversity:** The code emphasises the need for boards to have the right mix of skills and experience to ensure constructive challenge and to promote diversity. It stresses the need to refresh boards and for robust succession planning. It also asks that meaningful consideration is given to the length of term that chairs remain in post, so that a clear division of power exists between chair and chief executive.

The new code strengthens the role of the nomination committee in succession planning and ensuring a diverse board. It stresses the importance of external board evaluation including reports to the nomination committee on details of the contact the external board evaluator has had with the board and individual directors.

**Remuneration:** The new code emphasises that remuneration committees should take into account workforce remuneration and related policies when setting director remuneration. It also warns that formulaic calculations of performance related pay should be rejected in favour of the application of discretion when deciding pay awards.

## In summary

In our view, the new code represents a significant change that should have a positive impact on the application of corporate governance in the UK. We will be speaking to colleagues in NHS Improvement about the prospect of updating the code for NHS foundation trusts to ensure it is also relevant for NHS trusts and in line with the UK Code of Governance. The code can be found on [The Financial Reporting Council's website](#).

## Contact info

For further information on the code, or to discuss its implications for your trust, please contact John Coutts, Governance Advisor, NHS Providers at [john.coutts@nhsproviders.org](mailto:john.coutts@nhsproviders.org)

**AIREDALE FORMAL BOARD ACTION LIST**  Closed

**PUBLIC**

Ref Item	Action	Responsible	Deadline / Board Date	Status / Comments
<b>From 28 March 2018 Meeting</b>				
42/18	Annual Staff Survey Report – present 6 month progress update on disability focus group action plan.	N Parker	26 September 2018	
<b>From 30 May 2018 Meeting</b>				
108/19ii)	Freedom to Speak Up Annual Report to include the key learning set and follow-up actions	N Parker	25 July 2018	Deferred to October Board meeting
110/18	Nursing & Midwifery Report to include the age profile of nursing staff employed at the Trust, benchmarked against other Trusts	J Asbury	25 July 2018	Completed
114/18ii)	Schedule patient story focussing on impact of referrals on waiting lists	J Asbury	31 October 2018	
114/18ii)	Update on shared stroke service arrangement with BTHFT	S Hunter	25 July 2018	
<b>From 27 June 2018 Meeting</b>				
126/18	Chair to write to the Enhanced Care Team to congratulate them on their work to date.	Chair	ASAP	Completed
130/18(iv)	CQC Local System Review – present action plan for review	J Asbury	25 July 2018	
131/18	People Report: (i) Include analysis of workforce gaps (ii) Analysis of reasons for non-compliance with mandatory training (iii) Focus on vacancy rates for September report	N Parker	26 September 2018	Deferred to October Board meeting

133/18	Gosport Inquiry – ‘True for Us’ Review to be presented.	J Asbury	25 July 2018	Completed
<b>From 25 July 2018 meeting</b>				
169/18	Integrated Governance Dashboard Report to be updated to include narrative to explain material performance changes and show whether patient choice is a contributory factor in performance standard breaches.	A Copley	26 September 2018	
173/18	CQC Adult Inpatient Survey 2017 – provide analysis of whether the response ratio for the BAME group was representative of the Trust's inpatient numbers.	J Asbury	26 September 2018	
175/18	Complaints Annual Report 2017/18. Update on whether the 40 day response time for complaints could be reduced.	J Asbury	26 September 2018	
<b>Items to ‘keep in view’</b>				
<b>From 26 April 2018 Meeting</b>				
78/18(v)	Schedule presentation of patient story focussing on AAU	J Asbury	KIV	COMPLETED (scheduled for September Board)
81/18	Present update report on improvements to data recording for crude mortality report	K Mainprize	KIV	