

# Fit and proper person policy

Approver Senior Management

Policy Fit and Proper Person

Appendices

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Authors Human Resources department

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(subject to organisation and/or legislation required change)

Related Documents

- Data Protection Policy
- Code of Conduct – Confidentiality
- Retention of Records Policy
- Safeguarding Young People and Adults
- Disciplinary

Location of Hard Copy Human Resources Dept.

Signed:

.....  
Chief Executive Officer

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Human Resources Lead

Name

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# Fit and proper person Trustees/CEO/Senior Managers (regulations 2014)

## Policy and procedure

### 1 Introduction

- 1.1 This policy describes how the charity will meet its obligations under the Fit and Proper Person's Regulations (2014) (FPPR) and, in doing so, ensures that its voluntary Directors (Trustees) and senior staff have the necessary capability, experience and personal qualities to perform their role.
- 1.2 Whilst the regulations are focused on health and social care services, this policy applies to all relevant senior employees.
- 1.3 The roles to which this policy applies are:
- Charity Directors (Charity trustees)
  - Chief Executive Officer
  - Senior/Service/Function Managers
- 1.4 In this policy the term 'employment' applies to employed and voluntary roles.

### 2 Regulatory Requirements

- 2.1 Persons to whom this regulation applies must —
- a. be of good character
  - b. have the qualifications, skills and experience which are necessary for carrying on the regulated activity or (as the case may be) for the relevant office or position
  - c. be capable by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the carrying on of the regulated activity or (as the case may be) the office or position for which they are appointed or, in the case of an executive director, the work for which they are employed.
  - d. not have been responsible for, been privy to, contributed to or facilitated, any 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
  - e. not be 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
- 2.2 A person cannot be a person to whom this regulation applies if any of the grounds of unfitness apply:
- 2.2.1 (a) been convicted in the United Kingdom of any criminal offence or been convicted elsewhere

of any offence which, if committed in any part of the United Kingdom would constitute a criminal offence; and (b) been sentenced to a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months (without the option of a fine), and on appeal the conviction has not been quashed nor the sentence reduced to a sentence other than a sentence of imprisonment or a sentence of imprisonment of less than 3 months (whether suspended or not).

2.2.2 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.

2.2.3 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.

2.2.4 The person has made a composition or arrangement with, or granted a Charity deed for, creditors and not been discharged in respect of it.

2.2.5 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."4 Revocation 3. Regulation 4 of the Health and Social Care Act 2008 (Regulated Activities)

### 3 Compliance

3.1 Autism Hampshire will comply with these regulations through:

- Carrying out employment checks as outlined in the Recruitment Policy – which include proof of identity, right to work, a full employment history and a minimum of two detailed references (including one from the most recent employer). Reference taking will be amended and will specifically refer to the suitability of an individual
- A check of qualifications and professional registration including original certificates.
- A DBS check will need to be carried out as appropriate for roles that fall within a "regulated activity".
- A check of the insolvency and bankruptcy register and disqualified directors' register
- Potential candidates (at short list stage) will also be asked to self-certify that they meet the FPPR (Appendix 1)
- The HR department will check the CQC website for publicly available information relevant to shortlisted candidates prior to interview.
- The HR Department will evidence the checks that they have made on the shortlisted candidates and confirm these to the Chair of the relevant interview panel.
- The interview process will contain a number of 'values based' questions which can be considered as part of the compliance evidence.
- The CEO Department will be responsible for confirming to the CQC that a new Trustee is a fit and proper person.

#### Existing Directors (Trustees)

- The CEO department to write to members of the Board to confirm that they continue to meet the requirements of the FPPR and to complete a self-declaration form (Appendix 2).
- The CEO Department will check the CQC website (and those of other relevant regulators) for publicly available information on existing directors on an annual basis (or more frequently if any issues come to light during the year).

If information comes to light that suggests that an individual no longer meets the FPPR, this will be investigated. This may involve suspension and in circumstances where dishonesty or concealment on the part of the director concerned has occurred then outcomes may include dismissal for conduct or 'some other substantial reason'.

If an internal review leads to a decision that an individual director does not meet the FPPR, it is essential to inform the relevant regulator where the individual is registered.

## Review of policy and procedure

All of Autism Hampshire's policies and procedures aim to ensure that employees are aware of, and confident that, the employer is complying with current legislation and is protecting the interests of both the needs of the business and the employee. In this respect, it may be appropriate to modify existing policies and/or procedures from time to time to reflect changes as appropriate, and this policy will be reviewed as necessary by the Senior Management Team and/or by personnel as designated by the Senior Management Team

## Equality impact assessment

| Equality Impact Assessment – initial screening – Relevant Equality Area | Does the Policy or its implementation: |  |                                  | Does Autism Hampshire need to proceed to full EIA if in doubt then progress to full screening) |
|---|--|--|----------------------------------|--|
|   | Breach Equalities Legislation?         | Affect different groups in different ways (both positive and negative) | Promote equality/good relations? |  |
| Gender  | No                                     | No   | Yes                              | No   |
| Race  | No                                     | No   | Yes                              | No   |
| Disability  | No                                     | No   | Yes                              | No   |
| Sexual Orientation  | No                                     | No   | Yes                              | No   |
| Religion and Beliefs  | No                                     | No   | Yes                              | No   |

**Appendix 1**
**REFERENCE REQUEST**

Autism Hampshire will treat this reference as confidential. However, you should be aware that the candidate has the right under the Data Protection Act 1998 to request a copy of confidential job references received in relation to their application.

|                         |  |
|-------------------------|--|
| <b>APPLICANT NAME</b>   |  |
| <b>PREVIOUS NAME(S)</b> |  |
| <b>POST APPLIED FOR</b> |  |

It would be much appreciated if you could complete and return the following questionnaire as soon as possible in support of the application for the above named.

|   |                 |
|---|-----------------|
| Length of time that you have known the applicant  |                 |
| In what capacity                                  |                 |
| If employed, the dates you employed the applicant |                 |
| If employed by you, the reason for leaving        |                 |
| Would you re-employ?                              | <b>Yes / No</b> |
| If NO, please state why.                          |                 |

**Please comment on the applicant's:**

|   | <b>Please tick as appropriate</b> |             |                |             |
|---|-----------------------------------|-------------|----------------|-------------|
|   | <b>Very Good</b>                  | <b>Good</b> | <b>Average</b> | <b>Poor</b> |
| Conscientiousness                       |                                   |             |                |             |
| Ability to work on their own initiative |                                   |             |                |             |
| Practical Ability and Skill             |                                   |             |                |             |
| Reliability                             |                                   |             |                |             |
| Communication/Interpersonal Skills      |                                   |             |                |             |
| Organisational Skills                   |                                   |             |                |             |
| Relationships with Colleagues           |                                   |             |                |             |
| Relationships with people supported     |                                   |             |                |             |
| Honesty and trustworthiness             |                                   |             |                |             |

**Please comment on how well you think the applicant would perform in this role? (Job description attached.) Please add any additional information you may think relevant.**

Disciplinary offences, spent or otherwise - in order to protect the public, the post for which the application is being made is exempt from Section 4(2) of the Rehabilitation of Offenders Act 1974 by virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975. It is not therefore in any way contrary to the Act to reveal any information you may have concerning the convictions which would otherwise be considered as "spent". Any such information will be kept in strict confidence and used only in consideration of the suitability of this applicant for a position for which such an exemption is appropriate.

**Details of Spent Convictions or disciplinary offences:**

Due to the nature of this employment do you have any concerns regarding the above person and their ability to work with vulnerable children/adults If yes, please provide your reasons noting that there should be no material miss-statement or omission relevant to the suitability of the applicant.

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2008 state that the Charity must not appoint or have in place an individual as a Trustee/director, or who performs the functions of or equivalent or similar functions of a director if they do not fulfil the following requirements:

- (a) the individual is of good character;
- (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;
- (c) 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 employed;
- (d) the individual has not been responsible for, 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
- (e) none of grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.

The grounds of unfitness specified in Part 1 of Schedule 4 to the Regulated Activities Regulations are;

- (a) 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;
- (b) 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;
- (c) 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;
- (d) the person has made a composition or arrangement with, or granted a Charity deed for, creditors and not been discharged in respect of it;
- (e) the person is included in the children's barred list or the adult's 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

- (f) the person is prohibited from holding the relevant office or position, or in the case of an individual for carrying on the regulated activity, by or under any enactment.

Considering these requirements and based on your knowledge of the individual would you have any concerns as to the suitability for the appointment?

Yes  No

If you have answered “yes”, please confirm why below:

-----  
 \_\_\_\_\_

|   |                   |
|---|-------------------|
| <b>Name:</b>  | <b>Job Title:</b> |
| <b>Signature:</b>                                     | <b>Date:</b>      |
| <b>Company Stamp where applicable (if available):</b> |                   |

**Thank you for taking the time to complete the reference.**

**Important: Should the applicant request sight of this reference under the Data Protection Act 1998 or Freedom of Information Act 2000, then it may be shared with them.**

## Appendix 2

### DECLARATION

The position you have applied for is subject to Regulation 5 of the Social Care Act 2008 (Regulated Activities) Regulations 2014 ("the Regulations") and in particular the requirement that board level appointments must be "fit and proper persons." Board level appointments include executive and non-executive directors (including permanent, interim and associate positions) irrespective of voting rights.

Before you can be considered for appointment with the Charity we need to be satisfied you are a fit and proper person pursuant to the Regulations.

The position you have applied for has also been identified as being an 'eligible position' under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) (the Exceptions Order), the Police Act 1997 (Criminal Records) Regulations (as amended) and the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedom's Act 2012). As such, it is eligible for a standard or an enhanced disclosure to be requested through the Disclosure and Barring Service (DBS).

Both standard and enhanced DBS disclosures contain information about an applicant's spent and unspent convictions, cautions and reprimands. Enhanced disclosures may also include other relevant police information.

Please be aware that the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) 2013 provides that certain spent convictions and cautions will become protected when specific conditions are met and therefore are not subject to disclosure through a DBS check, and employers cannot take these into account. Guidance and criteria on the filtering of these cautions and convictions can be found on the Disclosure and Barring Service website at: [www.gov.uk/government/disclosure-and-barring-service](http://www.gov.uk/government/disclosure-and-barring-service)

The position has, in addition been identified as a regulated activity under the Safeguarding Vulnerable Groups Act (2006) (as amended by the Protection of Freedom's Act 2012) and an enhanced DBS disclosure will include information which is held on the Children's and/or Adults barred list(s), as applicable to the position.

The Charity in accordance with the Regulations need to assess your current physical and mental health in order to ascertain whether you are able to properly perform tasks which are intrinsic to the role in question should you be considered appointable. A separate health questionnaire would be forwarded to you in this circumstance.

The Charity aims to promote equality of opportunity and is committed to treating all applicants for positions fairly and on merit regardless of ethnicity, disability, age, gender or gender re-assignment, religion or belief, sexual orientation, pregnancy or maternity, marriage or civil partnership. We undertake not to discriminate unfairly against applicants on the basis of criminal conviction or other information declared.

Prior to making a final decision concerning your application, we shall discuss with you any information declared by you that we believe may have a bearing on your suitability for the



position. If we do not raise this information with you, this is because we do not believe that it should be taken into account. In that event you still remain free, should you wish, to discuss the matter with the interviewing panel. As part of assessing your application, we will take into account relevant criminal records and other information declared plus publically available information and information from referees.

The information that you provide in this declaration form will be processed in accordance with the Data Protection Act 1998. It will be used for the purpose of determining your application for this position. It will also be used for purposes of enquiries in relation to the prevention and detection of fraud.

Please answer all of the following questions in this form. If you answer 'yes' to any of the questions, please provide full details in the space indicated. Please also use the space below to provide any other information that may have a bearing on your suitability for the position for which you are applying. You may continue on a separate sheet if necessary, and you may attach supplementary comments should you wish to do so.

Answering 'yes' to any of the questions below will not necessarily bar you from an appointment within the Charity This will depend on the relevance of the information you provide in respect of the nature of the position for which you are applying and the particular circumstances.

- 
1. Are you currently bound over, or do you have any current unspent convictions or cautions, or have you ever been convicted of any offence by a Court or Court-Martial in the United Kingdom or in any other country?

NO

YES  please include details of the order binding you over and/or the nature of the offence, the penalty, sentence or order of the Court, and the date and place of the Court hearing.

Please note: you do not need to tell us about parking offences

2. Have you been charged with any offence in the United Kingdom or in any other country that has not yet been disposed of?

NO

YES  If YES, please include details of the nature of the offence with which you are charged

Date on which you were charged, and details of any on-going proceedings by a prosecuting body

You are reminded that, if you are appointed, you have a continued responsibility to inform us immediately where you are charged with any new offence, criminal conviction or fitness to practice proceedings in the United Kingdom or in any other country that might arise in the future.

You do not need to tell us if you are charged with a parking offence.

3. Are you aware of any current or previous investigation being undertaken following allegations made against you in relation to matters of fraud or other financial mismanagement?

NO

YES  If known to you, any action to be taken against you.  
YES, please include details of the nature of the allegations made against you, and if

4. Are you aware of any current or previous investigation that indicates that you, or an organisation for which you held responsibility, has failed to adhere to recognised best practice, guidance or processes regarding care quality?

NO

YES  If YES, please include details of the nature of the investigation made against you or the organisation, and if known to you, any action to be taken against you or the organisation by the investigatory body.

5. Have you been investigated by the Police or any other investigatory Body resulting in a current or past conviction or dismissal from your employment or volunteering position?

NO

YES  If YES, please include details of the nature of the allegations made against you, and if known to you, any action to be taken against you by the Investigatory Body.

6. Have you ever been dismissed or disciplined by reason of serious misconduct from any employment, volunteering, office or other position previously held by you?

NO

YES  If YES, please include details of the employment, office or position held, the date that you were dismissed or had disciplinary action taken against you, including the nature of the action or sanction, and provide details of the nature of allegations of misconduct made against you.

7. Have you been convicted of breaching any health and safety requirements or legislation on the basis of whether you or an organisation for which you have, or have had, responsibility for has organised or managed its activities?

NO

YES  If YES, please include details of the nature of the health and safety conviction against you or the organisation, and if known to you, any action to be take

8. Have you ever been disqualified, erased, removed or struck off from the practise of a profession, or required to practise subject to specified limitations following fitness to practise

proceedings, by a regulatory or licensing body in the United Kingdom or in any other country?

NO

YES  If YES, please include details of the nature of the disqualification, erasure, removal, limitation or restriction, the date, and the name and address of the licensing or regulatory body concerned.

The information required includes being convicted of an offence or removal from the register of a professional health or social care regulator.

9. Are you currently or have you ever been the subject of any investigation or fitness to practise proceedings by any licensing or regulatory body in the United Kingdom or in any other country?

NO

YES  If YES, please include details of the reason given for the investigation and/or proceedings undertaken, the date, details of any limitation or restriction to which you are currently subject, and the name and address of the licensing or regulatory body concerned.

10. Have you been responsible for, privy to, contributed to or facilitated any serious misconduct or mismanagement in the carrying out of any health and social care services and/or any other services that may require registration with the CQC?

NO

YES  If YES, please include details.

11. Are you :

- an undischarged bankrupt;
- a person who has had sequestration awarded in respect of your estate which is not discharged;
- subject to a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to the 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; or
- a person who has made a composition arrangement with, or granted a Charity deed for, creditors, and not been discharged in respect of it?

NO

YES  If YES, please include details.

12. Are you subject to any other prohibition, limitation, or restriction that means we are unable to consider you for the position for which you are applying, for example, you are prohibited from holding the post of director?

NO

YES  If YES, please include details.

13. Have you previously been employed in a position that involved work with children or vulnerable adults?

NO

YES  If YES, please include details/reasons as to why this position ended.

14. Do you know of any other matters in your background which might cause your reliability or suitability for employment to be called into question?

NO

YES  If YES, please include details.

If you have answered 'yes' to any of the questions above, please use this space to provide details. Please indicate clearly the number(s) of the question that you are answering.

You may continue on a separate sheet if necessary and may attach supplementary comments should you wish to do so.



**IMPORTANT - DECLARATION**

The Data Protection Act 1998 requires us to advise you that we will be processing your personal data. Processing includes: holding, obtaining, recording, using, sharing and deleting information. The Data Protection Act 1998 defines 'sensitive personal data' as racial or ethnic origin, political opinions, religious or other beliefs, trade union membership, physical or mental health, sexual life, criminal offences, criminal convictions, criminal proceedings, disposal or sentence. Where you are applying for a position which involves regulated activity, this will also include any barring decisions made by the Disclosure and Barring Service (DBS) against the Children's or Adults barred lists under the terms of the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedom's Act 2012).

The information that you provide in this declaration form will be processed in accordance with the Data Protection Act 1998. It will be used for the purpose of determining your application for this position. It will also be used for purposes of enquiries in relation to the prevention and detection of fraud.

Once a decision has been made concerning your appointment, Autism Wessex will not retain this declaration form any longer than necessary. This declaration will be kept securely and in confidence. Access to this information will be restricted to designated persons within the organisation who are authorised to view it as a necessary part of their work.

In signing the declaration on this form, you are explicitly consenting for the data you provide to be processed in the manner described above.

I confirm that the information that I have provided in this declaration form is correct and complete. I understand and accept that if I knowingly withhold information, or provide false or misleading information, this may result in my application being rejected, or if I am appointed, in my dismissal, and I may be liable to prosecution.

Please sign and date this form.

SIGNATURE.....

NAME (in block capitals) .....

DATE.....

Please complete and return this Declaration Form in a separate envelope marked 'Confidential'. Forms should be returned "In Confidence" to Autism Hampshire 1648 Parkway Solent Business Park Whiteley PO15 7AH

If you wish to withdraw your consent at any time after completing this declaration form or you have any enquiries relating to information required in this form, please contact the HR Department directly. All enquiries will be treated in strict confidence.