

Appendix 1: TEST OF INDEPENDENCE FOR THE CHAIR AND NON-EXECUTIVE DIRECTORS

Introduction

A major contribution of the Non-Executive Director (including the Chair) is to bring wider experience and a fresh perspective to the boardroom. Although they need to establish close relationships with the Executive Directors and be well-informed, all Non-Executive Directors need to be independent of mind and willing and able to challenge, question and speak up.

The *FRC Corporate Governance Code* currently provides that Non-Executive Directors should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement. A Non-Executive Director is considered independent in character and judgement and there are no relationships or circumstances that could affect, or appear to affect, the person's judgement.

The *Higgs Report 2003* made it clear that receiving remuneration beyond the Non-Executive Director's fee would compromise an individual's independence. In addition, it is important that a Non-Executive Director is not so dependent on the income from their role as to prejudice the independence of judgement – and there's an expectation that Boards should take this into account in determining independence.

Monitor's Code of Governance (provision B.1.2) requires that *at least half of the Board of Directors, excluding the Chair, should comprise Non-Executive Directors determined by the Board to be independent.*

In addition, the *Code* (provision A.3.1) requires that the Chair should, on appointment by the Council of Governors, meet the independence criteria set out in B.1.1.

Provision B.1.1 provides the circumstances that determine whether a director is independent in character and judgement. On appointment (and reappointment) the Chair and Non-Executive Directors are required to sign a declaration of independence, confirming that they believe themselves to be independent in character and judgement.

The Board should determine whether there are relationships or circumstances which are likely to affect or could appear to affect the director's judgement. The Board should state in its annual report the reason if it determines that a director is independent despite the existence of relationships or circumstances that may appear relevant to its determination, as listed below.

Non-Executive Directors must not:

- have been an employee of the Trust within the last five years
- have, or have had, within the last three years a material business relationship with the Trust either directly or as a partner, shareholder, Director or senior employee of a body that has such a relationship with the Trust
- have received or receive additional remuneration from the Trust apart from the Director’s fee, participate in the Trust’s performance-related pay scheme, or be a member of the Trust’s pension scheme
- have close family ties with any of the Trust’s advisers, Directors or senior employees
- hold cross-directorships or have significant links with other Trust Directors through involvement in other companies or bodies
- have served on the Trust Board for more than six years from the date of their first appointment¹
- be an appointed representative of the Trust’s university medical/dental school.

Non-Executive Directors must:

- be independent from Executive Directors
- be financially independent on the remuneration they receive from the Trust
- act in an independent manner, i.e. giving their objective opinion and advice on situations discussed and not seen to be led by other Non-Executive Directors
- only spend the required time in the Trust so they do not become over familiar with the day-to-day running of operational issues
- ensure there is no conflict of interest at the time of appointment and throughout their term of office, bringing to the Board’s attention whether there is a potential conflict of interest.

Although the Chair has the responsibility to coordinate Non-Executive Directors’ activities, the Chair is not seen as managing Non-Executives, therefore allowing them to be independent in decision-making processes.

Test of Independence

I confirm that I meet the independence criteria as listed above.

Signed			
Name		Date	

¹ Ref Monitor’s *Code of Governance for FTs*: provision B.7.1 Any term beyond six years for a NED should be subject to particularly rigorous review and should take into account the need for progressive refreshing of the Board. NEDs may, in exceptional circumstances, serve longer than six years but this should be subject to annual reappointment.

**Appendix 2: PRE-EMPLOYMENT AND FIT & PROPER PERSONS SELF-DECLARATION:
CHAIR AND NON-EXECUTIVE DIRECTORS**

Applicants for any Board Director vacancies are required to complete pre-employment checks including the declaration of significant commitments and confirmation of ability to meet the time commitment requirement, as well as the Fit & Proper Persons Requirements self-declaration.

First Name		Surname	
Position Applied for			

1 Pre-Employment Self-Declaration

*Please complete each box with a tick; it will be assumed that **you have not confirmed the statement if any boxes are left blank***

I confirm that:

	I am able to make sufficient time available to discharge the responsibilities of the role as detailed in the candidate information pack	
	I have the following significant commitments :	
	Overview	Time Involved
	I meet the independence criteria as stated in appendix 1 Test of Independence	
	I do not meet any of the disqualification criteria as detailed in the candidate information pack and the Trust's constitution	

I undertake to notify the Trust immediately if I no longer satisfy or if there are any changes to the above requirements.

Signed		Name	
		Date	

2 Fit & Proper Persons Requirement Self-Declaration

<i>Please confirm each statement by completing each box with a tick; it will be assumed that you have not confirmed the statement if any boxes are left blank.</i>	
I confirm that:	
I am of good character in that I have not been convicted in the UK of any offence or being convicted elsewhere of any offence which, if committed in any part of the UK, would constitute an offence	
I am of good character in that I have not been erased, removed, or struck off a register of professionals maintained by a regulator of health care or social work professionals	
I have the qualifications, competence, skills and experience which are necessary for the relevant office or position or the work for which I am employed by the Trust	
I am able by reason of my health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the office or position for which I am appointed or to the work for which I am employed	
I 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 on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity	
I satisfy the test that I am a fit person under Schedule 4 part 1 of the Regulations in that:	
I am not an undischarged bankrupt	
My estate has not had sequestration awarded in respect of it and if it has such sequestration has been discharged	
I am not 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	
I am not a person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986	
I have not made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it	
I am not 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	
I am not 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	

It is a condition of appointment that those holding Board Director posts provide confirmation in writing, prior to appointment and thereafter on a yearly basis or on demand, of their fitness to hold such posts. Fitness to hold such a post is determined in a number of ways, including (but not exclusively) by the Trust's Constitution, the Trust's Licence, the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (the Regulations).

By signing this declaration, you are confirming that you do not fall within the definition of an "unfit person" or any other criteria set out below, and that you are not aware of any pending proceedings or matters which may call such a declaration into question.

The information that you provide in this declaration will be processed in accordance with the Data Protection Act 1998. It will be used for the purpose of determining your suitability for the senior position you are applying for. It will also be used for purposes of enquiries in

relation to the prevention and detection of fraud. This declaration will be kept securely and in confidence. Access to this information will be restricted to designated persons within the Trust who are authorised to view it as a necessary part of their work.

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

I consent to the information provided in this Declaration Form being used by the Trust for the purpose of checking that I satisfy the requirements of the FPPR for the position applied for.			
I understand that providing any false and/or misleading information on this self-declaration form and/or if it comes to light that I have previously provided false and/or misleading information in support of my application that this may lead to disciplinary action being taken against me in accordance with relevant Trust processes and could lead to the termination of the appointment.			
I confirm that I do not fit within the definition of an “unfit person” as listed above and that there are no other grounds under which I would be ineligible to be in post. I undertake to notify the Trust immediately if I no longer satisfy the criteria to be a “fit and proper person” or other grounds under which I would be ineligible to continue in post come to my attention.			
Signed		Name	
		Date	