

Fit and Proper Person Policy and Procedure

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Simon Buxton - Director

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Fit and Proper Persons Policy and Procedure

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Introduction

The Fit and Proper Person Regulation (FPPR) requirements came into force for all care providers in November 2014. The regulations require providers to seek the necessary assurance that all executive and non-executive directors (or those in equivalent roles) are suitable and fit to undertake the responsibilities of their role.

Policy Statement

This policy outlines the process within Banquo Limited to administer and review the Fit and Proper Persons Test for members of the Board of Directors, the Executive Team and their direct reports who are required to demonstrate that they are a Fit and Proper Person under Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

The Care Quality Commission (CQC) holds Banquo Limited accountable in relation to FPPR as part of its quality statements under their regulatory framework.

Banquo Limited understands the important strategic role of Directors and their influence on the direction and culture of its services. We also recognise that individuals who have authority over team members who deliver care are responsible for the overall quality and safety of that care.

In order to comply with these requirements, we will ensure there are robust processes in place to assess the suitability of our Directors at the point of recruitment and throughout their ongoing employment. Banquo Limited will also have effective arrangements in place to tackle issues should any concerns be raised about a Director's ongoing fitness and suitability to carry out any such role.

Definitions

Within this Fit and Proper Persons Policy, the following terminology is used:

- 2014 Regulations – this refers to The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- Executive Team – refers to the Chief Executive, Executive Directors, non-voting Directors who regularly attend the Board and the Company Secretary.
- Direct Reports – those senior managers within Banquo Limited who are directly line managed by a member of the Executive Team.
- DBS – Disclosure and Barring Service checks.

Scope

This policy applies to the Senior Management Team of Banquo Limited, including and if applicable the chair of the Board of Directors, any Non-Executive Directors, and members of the Executive Team.

Purpose

This policy aims to meet the legal requirements of the regulated activities Banquo Limited is registered to provide. The purpose of these requirements is not only to hold board members to account in relation to their conduct and performance, but also to instill public and service user confidence in those who have lead responsibility for Banquo Limited and the services they provide.

The purpose of this policy is to outline the arrangements Banquo Limited has in place to ensure that members of the Board of Directors, together with other team members identified by the Board of Directors, have been subject to the Fit and Proper Persons Test, which is outlined in Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and supported by guidance issued from time to time by the Care Quality Commission and other appropriately designated bodies.

The aim of the process outlined in this document is that all members of the Board of Directors, Directors and the Executive Team and their direct reports have been subject to the relevant Fit and Proper Persons Test on an annual basis.

The objective of this process is to ensure:

- a) members of the Board of Directors and relevant team members are Fit and Proper Persons to undertake their roles on behalf of Banquo Limited;
- b) at least annually, the outcome of Fit and Proper Persons Test will be reported to the Board of Directors (together with information about new starters, investigations, non-compliance or breaches in the process).

Role of Directors

Banquo Limited understands the important strategic role of its Directors, and the influence on the direction and culture of its services.

The term 'Directors' applies to a provider's board Directors, board members and equivalents (referred to in this policy as 'Directors'), who are responsible and accountable for delivering care, including associate Directors and any other individuals who are members of the board, irrespective of their voting rights. Directors are the group of people constituted (formally or informally) as the decision-making body Banquo Limited

The regulation applies to interim positions as well as permanent appointments.

Banquo Limited will make every reasonable effort to assure itself of an individual's fitness by:

- Checking that Directors have the qualifications, competence, skills and experience which are necessary for their role;
- Ensuring the individual is able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to their role;
- Assessing and checking the character of the individual to assess good character, and that they do not meet any of the 'unfitness' criteria; and
- Obtaining information listed under Schedule 3 of the Health and Social Care Act Regulations 2014 (as amended)

Banquo Limited will use all resources available at recruitment and for the duration of their role, through robust recruitment, management appraisal, disciplinary and dismissal processes in place to check the suitability of Directors. This includes undertaking DBS checks on Directors where the position and role meet the eligibility criteria for a DBS check.

Banquo Limited will not appoint a Director or continue to have a Director in post where the individual 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 providing a service elsewhere which, if provided in England, would be a regulated activity.

CQC Information

Where information of concern is highlighted to Banquo Limited by the CQC, Banquo Limited will respond within 10 days as to the decision they have made, and the process they have used to determine fitness/unfitness of a director.

Taking Action

Banquo Limited will take action where information is received about a Director's fitness to establish whether they are fit for the role. Where a Director is found to be 'unfit', Banquo Limited will follow the Disciplinary Policy and Procedure.

Notifications

Banquo Limited will notify the Care Quality Commission of changes of Directors when they occur through the CQC specified process.

Procedure

Roles and Responsibilities of the Chair

The requirements of the Regulation are placed on the chair who is responsible for discharging the requirement placed on Banquo Limited to ensure that all Directors meet the fitness test and do not meet any of the 'unfit' criteria.

Appointments

All new appointments, including appointments with Directors, whether or not they are shareholders, must be conducted through the Recruitment Policy and Procedure, including.

- The person specification
- Recruitment and job start packs.
- Directors should, in all circumstances, be subject to (as a minimum) the same assessment processes used for all employees.
- DBS checks should be undertaken where the appointment meets the requirement.
- Any other necessary checks such as bankruptcy and Director disqualification checks.

Qualifications, Skills, Experience and Character

Where qualification and or registration with a professional regulator are required to undertake the role, only those with the correct qualifications/registrations should be considered, and certificates and registrations must be checked and recorded.

All skills and experience necessary should be specified in the personal specifications and subject to competence-based questions or tasks. Care should be given to identify 'good character' through application and interview.

There is no statutory guidance as to how 'good character' in Regulation 5(3)(a) of the 2014 Regulations should be interpreted. However, the following are some of the features that are normally associated with 'good character':

- Honesty
- Trustworthiness
- Integrity
- Openness (also referred to as transparency)
- Ability to comply with the law.

To consider that a Director is of 'good character', the registered provider should be able to regard the Director as a person in whom the provider, CQC, anyone using services and the wider public can have confidence, and who will comply with the law.

Reasonable Adjustments

All reasonable adjustments must be made in accordance with the Equality Act 2010 to support individuals to undertake their role.

Non-compliance

Where a proposed Director is found not to be compliant with the requirements of Regulation 5, the non-compliant matter(s) must be investigated further. Where non-compliance is proven, Banquo Limited must decide if they consider that the matter does not materially affect the appointment.

If Banquo Limited decides that this is the case, and decides to appoint, they must provide in writing:

- Their deliberation processes.
- The evidence taken; and
- The reasons for having made the decision.

Care should be taken in ensuring the deliberation is reasonable, based on fact and the outcome is a logical result of the deliberation.

Managing an Unfit Outcome - Failure to Confirm the Appointment

If during pre-employment screening it emerges that the individual appears unlikely to meet the requirements of the Fit and Proper Person Test, then consideration should be given to withdrawing the appointment / offer of employment. The CEO of Banquo Limited with the support of their team and in line with the legislation, CQC guidance and Banquo Limited policy, may consider if requests from the individual for further information may be necessary so as to make a fully informed decision.

However, if the individual fails to meet the Fit and Proper Persons Test requirements, the offer for

appointment / employment should be withdrawn.

Annual Appraisal

All Directors must be annually appraised, using the format provided below, in order to establish that they still meet the requirements of Regulation 5.

A self-declaration will also be signed at appraisal to indicate continued compliance.

Training

Any training required should be kept up-to-date and new training and development identified both through appraisal and throughout the year.

Existing Directors Information Regarding 'Unfitness'

Where information of concern relating to 'unfitness' is disclosed concerning an existing Director, Banquo Limited must promptly and thoroughly investigate the matter. Where a breach is found, the directorship must be considered for termination, subject to a decision as to whether the issue relates to the role.

Where the issue does not directly breach the regulation and it is decided the directorship should not be terminated, an action plan and risk assessment should be drawn up in conjunction with the Director to safeguard against potential future risks concerning the matter along with a full explanation from the chair as to why the directorship is continuing. Any action plan or risk assessment should be regularly reviewed and updated.

Interim Arrangements

Where an individual Director is being investigated and subject to suspension, interim arrangements must be put in place by the chair to ensure the smooth running of the board.

Unfitness

Unfitness criteria in relation to Regulation 5 is set out in Schedule 4 of the regulations:

- 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;
- 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(b);
- 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; or
- 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.

Schedule 3 Health and Social Care Act 2014 (as amended)

Schedule 3 requires information required in respect of persons employed or appointed for the purposes of a regulated activity. This includes:

- Proof of identity - including a recent photograph
- Where required, a DBS or enhanced DBS
- Satisfactory conduct in previous employment - health or social care - children or vulnerable adults
- Where previously employed as above, the reason for leaving?
- Verifications of relevant qualifications
- Full employment history with explanation of gaps
- Satisfactory information about any physical or mental health conditions which are relevant to the person's capability, after reasonable adjustments are made, to properly perform tasks which are intrinsic to their employment or appointment for the purposes of the regulated activity

Managing an Unfit Outcome – Annual Review Process

If during the annual review process aspects of the annual review process have not been completed or it has been found that Banquo Limited had not complied with this policy, then in light of Banquo Limited's just and learning culture, consideration should be given – based upon a risk assessment – as to whether or not the individual should be suspended and / or subject to any form of disciplinary action. For example, delays may occur in processing a DBS check which is beyond their control or paperwork has not been received by the Banquo Limited's Team in the requested timescales to triangulate aspects of the checks undertaken.

In these circumstances, the CEO of Banquo Limited will bring this matter to the attention of the Board. The CEO of Banquo Limited will then agree to the necessary actions with the board, which will then be communicated to the individual concerned and the Company Secretary. The matter and outcome should also be reported as part of the annual report to the Board of Directors.

Managing an Unfit Outcome - Upon Investigation of a Concern

Circumstances may arise that concerns are raised about the Fit and Proper Person status of an individual as a result of:

- a) a self-declaration,
- b) concerns raised via internal escalation processes (including the annual/ongoing review); or
- c) concerns raised externally to Banquo Limited by an individual, an organisation, or a regulator.

When a concern is brought to the attention of Banquo Limited, the following initial actions will need to be undertaken:

- a) depending on which individual a concern(s) is raised about, that the appropriate members of Banquo Limited are informed as outlined
- b) consideration as to whether the nature of the concern(s) raised will require the individual to be suspended or placed on restricted duties. As all such concern(s) will be notified to the Company Secretary, he/she will seek appropriate and independent legal advice on this issue to inform the actions

of Banquo Limited

c) confirmation of the investigation officer and the process and timescale to be used for the investigation (Executive Director of Banquo Limited and Company Secretary to advise the Chair, Senior Independent Director or Chief Executive as appropriate, taking account of the independent legal advice obtaining by Company Secretary)

d) Company Secretary to liaise with Banquo Limited's CQC Nominated Individual so that the Care Quality Commission may be advised of the concerns raised and the process being adopted by Banquo Limited to investigate this matter.

Monitoring

Banquo Limited will monitor and review its processes to ensure they are robust and fit for the purpose they are intended for. Where evaluation identifies the need for change, Banquo Limited will update the process to reflect the changes needed.

The Fit and Proper Persons status of the Board of Directors, the Executive Team and their Direct Reports is subject to review on appointment and on an annual and ongoing basis. The outcome of these reviews will be subject to:

a) in respect of the Board of Directors, the Executive Team and their Direct Reports, an annual report to the Board of Directors; and

b) where issues of concern are raised, an ad hoc report to the Board of Directors (as appropriate) on the outcome of the review into the concern that had been raised.

Where necessary, reports on non-compliance with this policy will be taken to the next Audit Committee.

Related policies and procedures

Disciplinary Policy and Procedure

Recruitment Policy and Procedure

Legislation and Guidance

Care Quality Commission, (2015), Frequently Asked Questions: Enhanced Disclosure and Barring Service (DBS) Checks and Fit and Proper Person Requirement (FPPR) [Online] Available from: https://www.cqc.org.uk/sites/default/files/20151113_FPPR_and_DBS_FAQ_final.pdf

Care Quality Commission, (2018), Fit and Proper Persons Directors. [Online] Available from: <https://www.cqc.org.uk/guidance-providers/regulations-enforcement/fit-proper-persons-directors>

Care Quality Commission (2022) [Online] Available from:

<https://www.cqc.org.uk/guidance-providers/regulations/regulation-5-fit-proper-persons-directors>

Companies Act 2006

Data Protection Act 2018

Employment Rights Act 1996

Equality Act 2010

Police Act 1997

Sexual Offences Act 2003

The Care Act 2014

The Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2015

Appendix 1 - Fit and Proper Persons Requirement Self-Declaration Form for Directors

In line with the requirements of Regulation 5 of the Health & Social Care Act 2008 (Regulated Activities) Regulation 2014 and Banquo Limited Services' Fit and Proper Persons Policy, I hereby declare:

Name	
Position	

Declaration	Confirmed Yes / No
<ul style="list-style-type: none">I am of good character, including by reference to Schedule 4, Part 2 of the Health & Social Care Act 2008 (Regulated Activities) Regulations 2014 and the definitions within the CQC Guidance document Regulation 5: Fit and proper persons: directors	
<ul style="list-style-type: none">I have the qualifications, competence, skills and experience necessary for the relevant position	
<ul style="list-style-type: none">I am capable, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the office or position for which I am appointed / employed	
<ul style="list-style-type: none">I have not been responsible for, been privy to, contributed to or facilitated any serious misconduct any 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)	
<ul style="list-style-type: none">I am not 'unfit' as defined by Schedule 4, Part 1 of the Health & Social Care Act 2008 (Regulated Activities) Regulations 2014	
<ul style="list-style-type: none">I am able to supply information as set out in Schedule 3 of the 2014	

Regulations	
<ul style="list-style-type: none"> I am not prohibited from holding the relevant position under any other law e.g. under the Companies Act or the Charities Act. 	

I consent to the information provided in this declaration form being used by Banquo Limited for the purpose of checking that I satisfy the Fit and Proper Persons Requirement.

I understand and accept that if I knowingly withhold information, or provide false or misleading information, this may result in an investigation on accordance with relevant Banquo Limited processes and could lead to the termination of the appointment.

I confirm the information I have provided above is correct and complete. In addition to completing this annual self-declaration, I also understand that it is a requirement that I make Banquo Limited aware as soon as practicable of any incident or circumstances which may impact on my position and that I provide details to the Chair/Senior Independent Director (as relevant) so that this can be considered by Banquo Limited.

Signed: _____

Date: _____

Appendix 2 - Fit and Proper Persons Requirement (FPPR) - New Applicants Employment Checklist

Name		
Position		
		Checked & initials
Identification Checks	<ul style="list-style-type: none"> • Verification of ID as per the gov.uk right to work checklist • Confirmation of any restrictions on right to work in UK – if applicable Verification of Identification and Right to Work Checklist 	
Employment History	<ul style="list-style-type: none"> • Confirmation of a full employment history (any gaps in employment or study to be checked and documented) 	
Qualification Checks	<ul style="list-style-type: none"> • Original certificates verified for relevant qualifications 	
Disclosure & Barring Service Checks	<ul style="list-style-type: none"> • DBS Disclosure received prior to employee commencing work 	
Professional Registration	<ul style="list-style-type: none"> • Evidence of professional registration checked at initial appointment (where relevant) 	
References	<ul style="list-style-type: none"> • Reference from current employer • A further relevant reference 	
Occupational Health Checks	<ul style="list-style-type: none"> • Completed Health Declaration Form received. • Occupational Health referral completed if appropriate 	
Misconduct / Mismanagement	<ul style="list-style-type: none"> • Search of CQC records (Check if any provider for whom the individual has worked has had registration suspended/cancelled due to failings in care in the last five years (or longer if available)) • Check the involvement of the individual or any providers in previous inspections. (Investigate further if inspection rating is “requires improvement” or “inadequate.”) 	
Fit and Proper Persons Checks	<ul style="list-style-type: none"> • Self-declaration form received and approved (see Appendix C) • Check against the registers: <u>Disqualified</u> 	

	<p>directors; <u>Bankruptcy</u> and insolvency; and Removed Charity Trustees; and, where appropriate, relevant professional registers</p> <ul style="list-style-type: none"> • Confirm any relevant web search results 	
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I confirm the above checks have been undertaken and I am satisfied the candidate named above is assessed to be a 'Fit and Proper Person' for their appointed role.

Name	Signature	Date

Appendix 3 - Fit and Proper Persons Requirement – Annual Checklist for existing Directors

Name	
Position	

Item	Checked by (Initials)	Any relevant information to note
Fit and Proper Persons Requirement self-declaration signed and returned		
<u>Disqualified Directors Check</u> https://beta.companieshouse.gov.uk/search/disqualified-officers		
<u>Bankruptcy and insolvency check</u> https://www.insolvencydirect.bis.gov.uk/eiir/		
<u>Removed Charity Trustees Check</u> http://apps.charitycommission.gov.uk/trusteeregister/search.aspx?RegisteredCharityNumber=&CurrentLanguage=English&SubsidiaryNumber=&DocType& <u>Financial Conduct Authority</u> https://register.fca.org.uk/s/ <i>where individual has worked for an organisation regulated by the Financial Conduct Authority (FCA)</i>		
Where appropriate, relevant professional registers		
Web search results		

I confirm that the above checks have been undertaken and I am satisfied the individual named above is assessed to be a “fit and proper person” to continue in their appointed role.

Name	Signature	Date