

Regulation 5: Fit and proper persons: directors

Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 5

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 we can take regulatory action. See the [offences section](#) of this guidance for more detail.

The regulation in full

5.—

1. This regulation applies where a service provider is a body other than a partnership.

2. Unless the individual satisfies all the requirements set out in paragraph (3), a service provider must not appoint or have in place an individual—
 - a. as a director of the service provider, or
 - b. performing the functions of, or functions equivalent or similar to the functions of a director.
3. The requirements referred to in paragraph (2) are that—
 - 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, 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
 - e. none of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.
4. In assessing an individual's character for the purposes of paragraph (3)(a), the matters considered must include those listed in Part 2 of Schedule 4.

5. The following information must be available to be supplied to the Commission in relation to each individual who holds an office or position referred to in paragraph (2)(a) or (b)—
 - a. the information specified in Schedule 3, and
 - b. such other information as is required to be kept by the service provider under any enactment which is relevant to that individual.
6. Where an individual who holds an office or position referred to in paragraph (2)(a) or (b) no longer meets the requirements in paragraph (3), the service provider must—
 - a. take such action as is necessary and proportionate to ensure that the office or position in question is held by an individual who meets such requirements, and
 - b. if the individual is a health care professional, social worker or other professional registered with a health care or social care regulator, inform the regulator in question.

Guidance

This sets out the guidance providers must have regard to against the relevant component of the regulation.

5(1) This regulation applies where a service provider is a body other than a partnership

Guidance on 5(1)

- This regulation applies to all providers that are not individuals or partnerships.

5(2) Unless the individual satisfies all the requirements set out in paragraph (3), a service provider must not appoint or have in place an individual—

(a) as a director of the service provider, or

(b) performing the functions of, or functions equivalent or similar to the functions of a director.

Guidance on 5(2)

- For NHS bodies it applies to executive and non-executive, permanent, interim and associate positions, irrespective of their voting rights. The requirement will also apply to equivalent director posts in other providers, including trustees of charitable bodies and members of the governing bodies of unincorporated associations.
- Where a local authority is a provider, the regulations will not apply to elected members as they are accountable through a different route.

5(3)(a) the individual is of good character

Guidance on 5(3)(a)

- When assessing whether a person is of good character, providers must follow robust processes to make sure that they gather all available information to confirm that the person is of good character, and they must have regard to the matters outlined in Schedule 4, Part 2 of the regulations. It is not possible to outline every character trait that a person should have, but we would expect to see that the processes followed take account of a person's honesty, trustworthiness, reliability and respectfulness.

- If a provider discovers information that suggests a person 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.
- Where a provider considers the individual to be suitable, despite existence of information relevant to issues identified in Schedule 4, Part 2, the provider's reasons should be recorded for future reference and made available.

5(3)(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,

Guidance on 5(3)(b)

- Where providers consider that a role requires specific qualifications, they must make this clear and should only appoint those candidates who meet the required specification, including any requirements to be registered with a professional regulator.
- Providers must have appropriate processes for assessing and checking that the candidate holds the required qualifications and has the competence, skills and experience required, (which may include appropriate communication and leadership skills and a caring and compassionate nature) to undertake the role. These must be followed in all cases and relevant records kept.

- We expect all providers to be aware of, and follow, the various guidelines that cover value-based recruitment, appraisal and development, and disciplinary action, including dismissal for chief executives, chairs and directors, and to have implemented procedures in line with the best practice. This includes the seven principles of public life (Nolan principles).

5(3)(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,

Guidance on 5(3)(c)

- This aspect of the regulation relates to a person's ability to carry out their role. This does not mean that people who have a long-term condition, a disability or mental illness cannot be appointed. When appointing a person to a role, providers must have processes for considering their physical and mental health in line with the requirements of the role.
- All reasonable steps must be made to make adjustments for people to enable them to carry out their role. These must be in line with requirements to make reasonable adjustments for employees under the Equality Act 2010.

5(3)(d) the individual has 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

Guidance on 5(3)(d)

- Providers must have processes in place to assure themselves that a person has not been 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 and making independent enquiries.
- Providers must not appoint any person 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.
- A director may be implicated in a breach of a health and safety requirement or another statutory duty or contractual responsibility because of how the entire management team organised and managed its organisation's activities. In this case, providers must establish what role the director played in the breach so that they can judge whether it means they are unfit. If the evidence shows that the breach is attributable to the director's conduct, CQC would expect the provider to find that they are unfit.
- Although providers have information on when convictions, bankruptcies or similar matters are to be considered 'spent' there is no time limit for considering serious misconduct or responsibility for failure in a previous role.

5(3)(e) none of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.

Guidance on 5(3)(e)

- A person 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 must be subject to a check by the Disclosure and Barring Service (DBS).
- Providers must seek all available information to assure themselves that directors do not meet any of the elements of the unfit person test set out in Schedule 4 Part 1. Robust systems should be in place to assess directors in relation to bankruptcy, sequestration, insolvency and arrangements with creditors. 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.
- If a provider discovers information that suggests an individual is unfit after they have been appointed to a role, the provider must take appropriate and timely action to investigate and rectify the matter.

5(6) Where an individual who holds an office or position referred to in paragraph (2)(a) or (b) no longer meets the requirements in paragraph (3), the service provider must—

(a) take such action as is necessary and proportionate to ensure that the office or position in question is held by an individual who meets such requirements, and

(b) if the individual is a health care professional, social worker or other professional registered with a health care or social care regulator, inform the regulator in question.

Guidance on 5(6)

- Providers must assess and regularly review the fitness of directors to ensure that they remain fit for the role they are in. Providers must determine how often to review fitness based on the assessed risk to business delivery and/or to the people using the service posed by the individual and/or role.
- Providers must have arrangements in place to respond to concerns about a person's fitness in relation to Regulation 5(3) and (4) after they have been appointed to a role, which either they or others have identified, and providers must adhere to these arrangements.
- Providers must investigate, in a timely manner, any concerns about a person's fitness or ability to carry out their duties, and where concerns are substantiated, they must take proportionate, timely action. Where a person's fitness to carry out their role is being investigated, appropriate interim measures may be required to minimise any risk to people who use the service.

Related guidance

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Read our FAQ document to find out more about Disclosure and Barring Service checks and the fit and proper person requirement for directors.

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